



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,397	08/16/2001	Clayton Ericson	T8273	3898

7590

06/20/2003

M. Wayne Western
THORPE NORTH & WESTERN, L.L.P.
P.O. Box 1219
Sandy, UT 84091-1219

EXAMINER

RUSSEL, JEFFREY E

ART UNIT

PAPER NUMBER

1654

DATE MAILED: 06/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/931,397

Applicant(s)

ERICSON ET AL.

Examiner

Jeffrey E. Russel

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-20 and 22-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3, 5-20 and 22 is/are allowed.
- 6) ☒ Claim(s) 23-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Art Unit: 1654

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 23, 2003 has been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 23-28 are rejected under 35 U.S.C. 103(a) as being obvious over the WO Patent Application 98/48648. The WO Patent Application '648 teaches compositions comprising Ferrocet, which is an iron glycine chelate having a glycine:iron molar ratio of 2:1; an organic acid such as citric acid, malic acid, lactic acid, acetic acid, and Vitamin C (i.e. ascorbic acid); and a sugar such as sucrose. The organic acids prevent the iron source from generating undesired off-colors. The compositions can be prepared by dry blending followed by hydration, but also can be formed by spray drying. See, e.g., page 12, lines 1-34; page 13, lines 26-36; page 15, line 7-11; Examples 3, 5-12; and claims 20-29. The WO Patent Application '648 does not teach Applicants' claimed solubilizing agent:iron content weight ratios and sugar content:iron content weight ratios, and does not teach the order of combining components specified in instant claims 14-16. It would have been obvious to one of ordinary skill in the art at the time Applicants' invention was made to determine all operable and optimal weight ratios of the components present in the compositions of the WO Patent Application '648 because component ratio is an art-recognized result-effective variable which is routinely determined and optimized in the beverage and food arts. It would have been obvious to one of ordinary skill in the art at the

Art Unit: 1654

time Applicants' invention was made to alter the order of combining components in the method of the WO Patent Application '648 because the WO Patent Application '648 teaches that a variety of means can be used to prepare the compositions, because selection of any order of mixing ingredients is prima facie obvious (see MPEP 2144.04(IV)(C)), and because the same composition appears to form regardless of the order chosen.

4. Applicant's arguments filed May 23, 2003 have been fully considered but they are not persuasive.

Applicants have amended independent claims 1 and 17 to require that the iron amino acid chelates or iron proteinates and the organic acid form a mixture. Applicants' remarks attached to the response show what Applicants intend to claim with the word "mixture". In particular, by using the word "mixture", Applicants' claims exclude any covalent or ionic interactions between the iron amino acid chelates or iron proteinate and the organic acid (see, e.g., the sentence bridging pages 7 and 8 of the response) and exclude any chelation or complexation between the iron amino acid chelates or iron proteinate and the organic acid (see, e.g., page 8, lines 13-14, of the response). With respect to Pedersen et al, Applicants argue that the reference's use of the term "malate" means that a covalent reaction occurs involving the malic acid and the iron (see, e.g., page 8, lines 7-8). The examiner disagrees, as Hackh's Chemical Dictionary defines "malate" as being a salt of malic acid. Further, this dictionary definition of "malate" is consistent with Pedersen et al's description of the function of its malic acid and other organic acids, which is to provide charge balance to any Lewis base or electron donor sites present in the amino acid chelates (see, e.g., column 5, lines 36-39; column 6, lines 16-22; and column 7, lines 9-44). Accordingly, the malic acid used in Example 8 of Pedersen et al, and the other organic

Art Unit: 1654

acids used in Pedersen et al, are expected to interact ionically with the amino acid chelates of Pedersen et al. However, as this type of ionic interaction between the amino acid chelates and the organic acids of Pedersen et al is also excluded by the new claim language inserted into independent claims 1 and 17, the rejections over Pedersen et al are withdrawn. Pedersen et al also do not suggest Applicants' claimed invention, as Pedersen et al do not provide any motivation to form a mixture of their chelates and their organic acids where there is no interaction between the chelates and the organic acids. For analogous reasons, the new claim language inserted into independent claims 1 and 17 distinguishes over the WO Patent Application '648, which describes its organic acids as forming complexes with the ferric iron.

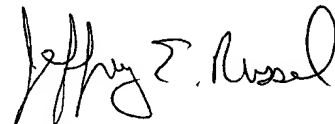
Independent claim 23 has not been amended to require that a mixture of iron amino acid chelate or iron proteinate and organic acid be formed, and there is no equivalent language in independent claim 23. No new arguments have been presented as to why claims 23-28 are patentable over the WO Patent Application '648. Accordingly, the obviousness rejection of claims 23-28 is maintained for the reasons of record.

5. Claims 1-3, 5-20, and 22 are allowed.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey E. Russel at telephone number (703) 308-3975. The examiner can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

Art Unit: 1654

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Brenda Brumback can be reached at (703) 306-3220. The fax number for Art Unit 1654 for formal communications is (703) 305-3014; for informal communications such as proposed amendments, the fax number (703) 746-5175 can be used. The telephone number for the Technology Center 1 receptionist is (703) 308-0196.



Jeffrey E. Russel

Primary Patent Examiner

Art Unit 1654

JRussel

June 13, 2003